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REMARKS

The Examiner has rejected Claims 1-29 under 35 U.S.C. 101 as being directed to non-statutory subject matter. Applicant respectfully asserts that such rejections are avoided in view of the clarifications made to each of the independent claims.

The Examiner has rejected Claims 1-29 under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (U.S. Patent No. 6,278,694) in view of Turek et al. (U.S. Patent No. 6,021,439). Applicant respectfully disagrees with such rejection.

With respect to independent Claims 1, 9, 17 and 25, the Examiner has relied on Col. 3, line 16-Col. 2, line 20 and Figure 1 in Wolf (applicant assumes the Examiner meant Col. 3, line 16-Col. 4, line 20) to make a prior art showing of applicant's claimed "consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents" (see this or similar, but not identical language in each of the foregoing claims).

Applicant respectfully asserts that Wolf expressly discloses "remote probes P1-P3 [that] transmit their monitoring data to a network manager 20" (see Col. 3, lines 37-39). Clearly, transmitting monitoring data to a single network manager (Figure 1), as in Wolf, does not meet applicant's specific claim language, namely that "the network traffic information [is consolidated] utilizing a plurality of host controllers coupled to the agents" (emphasis added).

Still with respect to independent Claims 1, 9, 17 and 25, the Examiner has relied on Col. 3, line 16-Col. 2, line 20; Figure 1; Figure 7a; and Figure 8 in Wolf to make a prior art showing of applicant's claimed "reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers" (see this or similar, but not identical language in each of the foregoing claims).

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Applicant respectfully asserts that the descriptions in Wolf of Figures 7A and 8, as relied on by the Examiner, clearly teach that “the network manager 20 produces a traffic report for the selected address pairs” (see Col. 8, lines 13-14-emphasis added). Applicant asserts that a network manager that reports does not meet applicant’s claimed “reporting...utilizing a plurality of zone controllers” (emphasis added). Thus, it appears that the Examiner has relied on the network manager in Wolf to meet both of applicant’s claimed consolidating and reporting. However, applicant claims utilizing a plurality of host controllers for consolidating and utilizing a plurality of zone controllers for reporting (two separate entities, as claimed).

Also with respect to independent Claims 1, 9, 17 and 25, the Examiner has relied on the following excerpt from Turek to make a prior art showing of applicant’s claimed “determining a reoccurring fee associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers” (see this or similar, but not identical language in each of the foregoing claims).

“In the management server implementation shown in FIG. 7, the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee. Alternatively, the management server is used to collect the Q-o-S information on behalf of a set of instrumented Web servers, and a central controller located elsewhere in the network provides analysis (and, if desired, distribution and/or publication, e.g., for a fee) of such data.” (Col. 8, lines 38-45)

Applicant respectfully asserts that the above excerpt from Turek relied on by the Examiner merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest “determining a reoccurring fee” (emphasis added), and especially not where the fee is “associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers,” as claimed by applicant. Again, applicant emphasizes that neither Wolf nor Turek teach the utilization of three different entities,

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namely agents, host controllers and zone controllers, let alone the aforementioned reoccurring fee which is tailored for such a framework, as claimed by applicant.

With respect to independent Claims 26 and 28, the Examiner has again relied on Col. 8, lines 38-45 in Turek (as excerpted above) to make a prior art showing of applicant's claimed "determining a fee associated with the distributed network analysis based on a number of the information collectors" (see this or similar, but not identical language in each of the foregoing claims). Yet again, applicant respectfully asserts that such excerpt merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest "determining a fee" (emphasis added), and especially not where the fee is "associated with the distributed network analysis based on a number of the information collectors," as claimed by applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

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Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claims 2-4 et al., the Examiner has relied on his rejections in Claim 1 with respect to the Wolf reference to make a prior art showing of applicant's claimed "determining the reoccurring fee associated with the reporting based on the number of the agents" (Claim 2); "determining the reoccurring fee associated with the reporting based on the number of the host controllers" (Claim 3) and "determining the reoccurring fee associated with the reporting based on the number of the zone controllers" (Claim 4). However, applicant notes that the proposed combination simply does not disclose any sort of fee that is specifically based on the number of particular components claimed, for tailoring a reoccurring fee for the unique claimed framework.

Again, since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or a specific prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 30-34 below, which are added for full consideration:

"wherein the reoccurring fee is based on a tiered system" (see Claim 30);

"wherein the number of the at least one of the agents, the host controllers, and the zone controllers are set for each tier" (see Claim 31);

"wherein the reoccurring fee is based on a non-linear function" (see Claim 32);

"wherein the reoccurring fee is a monthly fee" (see Claim 33); and

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"wherein each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee greater than the first reoccurring fee, and each zone controller incurs a third reoccurring fee greater than the second reoccurring fee" (see Claim 34).

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. Applicants are enclosing a check to pay for the added claims. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P063_01.305.01).

Respectfully submitted,
Zilka-Kotab, PC

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100